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### Can I Vote? Overview of the Conflicts Laws

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This pamphlet is an overview, using non-technical terms, of your obligations under the Political Reform Act's conflict-of-interest rules. It is intended to help you understand your obligations at the "big picture" level, and to guide you to more detailed resources.

You have a conflict of interest with regard to a particular government decision if it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests, and if the important impact on your economic interests is not also felt by a significant segment of the jurisdiction. The voters who enacted the Political Reform Act by ballot measure in 1974 judged such circumstances to be enough to influence, or to appear to others to influence, your judgment with regard to that decision.

The most important thing you can do to comply with this law is to learn to recognize the economic interests from which a conflict of interest can arise. No one ever has a conflict of interest "on general principles" under the Act—a conflict of interest can only arise from particular kinds of economic interests, which are explained below. If you learn to understand these interests and to spot potential problems, the battle is mostly won because then you can seek help from your agency's legal counsel or from the FPPC with the more technical details of the law.

Under rules adopted by the California Fair Political Practices Commission, deciding whether you have a financial conflict of interest under the Act is an eight-step process. If you methodically think through the steps (which are explained below) whenever you think there may be a problem, you can avoid most, if not all, mistakes.

If you learn nothing else from this pamphlet, remember these things:

- This law applies only to financial conflicts of interest; that is, conflicts of interest arising from economic interests.
- Whether you have a disqualifying conflict of interest depends heavily on the facts of each governmental decision.
- The most important proactive step you can take to avoid conflict of interest problems is learning to recognize the economic interests from which conflicts of interest can arise.

#### **Public Official**

**Step One - Are you a "public official," within the meaning of the rules?** The Act's conflict-of-interest rules apply to "public officials," as defined. This first step in the analysis is usually a formality—you are probably a public official covered by the rules. If you are an elected official or an employee of a state or local government agency who is designated in your agency's conflict of interest code, you are a "public official." If you file a Form 700 statement of economic interests each year, you are a "public official" under the Act. The "tough cases" typically involve consultants, investment managers and advisers, and public/private partnerships. If you have any doubts, contact your agency's legal counsel or the FPPC.

#### **Governmental Decision**

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*Step Two - Are you making, participating in making, or influencing a governmental decision?* The second step in the process is deciding if you are engaging in the kind of conduct regulated by the conflict-of-interest rules. The Act's conflict-of-interest rules apply when you:

- *Make* a governmental decision (for example, by voting or making an appointment).
- *Participate* in making a governmental decision (for example, by giving advice or making recommendations to the decision-maker).
- *Influence* a governmental decision by communicating with the decision-maker.

A good rule-of-thumb for deciding whether your actions constitute making, participating in making, or influencing a governmental decision is to ask yourself if you are exercising discretion or judgment with regard to the decision. If the answer is "yes," then your conduct with regard to the decision is very probably covered.

### **Economic Interests**

*Step Three - What are your economic interests? That is, what are the possible sources of a financial conflict of interest.* From a practical point of view, this third step is the most important part of the law for you. The Act's conflict-of-interest provisions apply only to conflicts of interest arising from economic interests. There are six kinds of such economic interests from which conflicts of interest can arise:

***Business Investment.*** You have an economic interest in a business entity in which you, your spouse, your dependent children or anyone acting on your behalf has invested \$2,000 or more.

***Business Employment or Management.*** You have an economic interest in a business entity for which you are a director, officer, partner, trustee, employee, or hold any position of management.

***Real Property.*** You have an economic interest in real property in which you, your spouse, your dependent children or anyone acting on your behalf has invested \$2,000 or more, and also in certain leasehold interests.

***Sources of Income.*** You have an economic interest in anyone, whether an individual or an organization, from whom you have received (or by whom you have been promised) \$500 or more in income within 12 months prior to the decision about which you are concerned. When thinking about sources of income, keep in mind that you have a community property interest in your spouse's income--a person from whom your spouse receives income may also be a source of a conflict of interest to you. Also keep in mind that if you, or your spouse or your dependent children, own 10% or more of a business, you are considered to receive "pass-through" income from the business's clients--in other words, the business's clients may be considered sources of income to you.

***Gifts.*** You have an economic interest in anyone, whether an individual or an organization, who has given you gifts which total \$320 or more within 12 months prior to the decision about which you are concerned.

***Personal Financial Effect.*** You have an economic interest in your personal expenses, income, assets, or liabilities, as well as those of your immediate family--this is known as the "personal financial effects" rule. If these are likely to go up or down as a result of the governmental decision, then it has a "personal financial effect" on you.

On the statement of economic interests (Form 700) you file each year, you disclose many of the economic interests that could cause a conflict of interest for you. However, be aware that not all of the economic interests which may cause a conflict of interest are listed on the Form 700. A good example is your home; it is common for a personal residence to be the economic interest that triggers a conflict of interest despite not being disclosed.

### **Directly or Indirectly Involved**

*Step Four - Are your economic interests directly or indirectly involved in the governmental decision?* An economic interest which is directly involved in--and therefore directly affected by--a governmental decision creates a bigger risk of a conflict of interest than does an economic interest which is only indirectly involved in the decision. This being the case, the FPPC's conflict-of-interest regulations distinguish between directly involved and indirectly involved economic interests.

Therefore, once you have identified your economic interests, you must next decide if they are directly involved in the governmental decision about which you are concerned (this is step four of the process). The FPPC has established specific rules for determining whether each kind of economic interest is directly involved in a governmental decision or not. The details of these rules are beyond the scope of this guide. Now that you understand why the rules for distinguishing between directly involved and indirectly involved economic interests exist, you should consult the particular rules themselves as each case arises.

### **Materiality**

*Step Five - What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?* At the heart of deciding whether you have a conflict of interest is a prediction: Is it sufficiently likely that the governmental decision will have a material financial effect on your economic interests? As used here, the word "material" is akin to the term "important." You will have a conflict of interest only if it is reasonably foreseeable that the governmental decision will have an important impact on your economic interests.

The FPPC has adopted rules for deciding what kinds of financial effects are important enough to trigger a conflict of interest. These rules are called "materiality standards," that is, they are criteria or guidelines for judging what kinds of financial impacts resulting from governmental decisions are considered material or important.

There are too many of these rules to review here. To understand them at a "big picture" level, remember these facts:

- If the economic interest is directly involved in the governmental decision, the standard or threshold for deeming a financial impact to be material is stricter (i.e. lower). This is because an economic interest which is directly involved in a governmental decision presents a bigger conflict-of-interest risk for the public official who holds the interest.
- On the other hand, if the economic interest is not directly involved, the materiality standard is more lenient because the indirectly involved interest presents a lesser danger of a conflict of interest.
- There are different sets of standards for the different types of economic interests. That is, there is one set of materiality standards for business entities, another set for real property interests, etc.
- The rules vary by the size and situation of the economic

interest. For example, a moment's thought will tell you that a \$20,000 impact resulting from a governmental decision may be crucial to a small business, but may be a drop in the bucket for a big corporation. Thus, the materiality standards distinguish between large and small businesses, between real property which is close or far from property which is the subject of the decision, etc.

### **Does a Conflict of Interest Result?**

*Step Six - The important question: is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests? As already mentioned in the introduction, the heart of the matter is deciding whether it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests.*

What does "sufficiently likely" mean? Put another way, how "likely" is "likely enough?" The Political Reform Act uses the words "reasonably foreseeable." The FPPC has interpreted these words to mean "substantially likely." The likelihood need not be a certainty, but it must be more than merely possible.

That which must be substantially likely is a material financial effect on one of your economic interests. A concrete way to think about this is to ask yourself the following question: Is it substantially likely that one of the materiality standards I identified in step five will be met as a result of the government decision?

Step six calls for a factual judgment, not necessarily a legal one. You must look at your economic interest and how it fits into the entire factual picture surrounding the decision.

### **Public Generally Exception**

*Step Seven - If you have a conflict of interest, does the public generally exception apply? Is the conflict of interest disqualifying? Not all conflicts of interest prevent you from lawfully taking part in the government decision at hand. Even if you otherwise have a conflict of interest, you are not disqualified from the decision if the public generally exception applies.*

This exception exists because you are less likely to be biased by a financial impact when a significant part of the community is substantially likely to feel essentially the same impact from a governmental decision that your economic interests are likely to feel. If you can show that a significant segment of your jurisdiction feels a financial impact which is substantially similar to the impact on your economic interest, then the exception applies.

The "public generally" exception must be considered with care. You may not just assume that it applies. There are specific rules for identifying the "specific segments" of the general population with which you may compare your economic interest, and specific rules for deciding whether the financial impact is "substantially similar."

### **Legally Required Participation**

*Step Eight - Even if you have a disqualifying conflict of interest, is your participation legally required? In certain rare circumstances, you may be called upon to take part in a decision despite the fact that you have a disqualifying conflict of interest. This "legally required participation" rule applies only in certain very specific circumstances where your government agency would be paralyzed from acting. You are most strongly encouraged to seek advice from your agency legal counsel or the FPPC before you act under this rule.*

## **Conclusion**

These are the keys to meeting your obligations under the Political Reform Act's conflict-of-interest laws:

***Know the purpose of the law:*** to prevent biases, actual and apparent, which result from the financial interests of the decision-makers.

***Learn to spot potential trouble early***--understand which of your economic interests could give rise to a conflict of interest.

***Understand the "big picture" of the rules.*** For example, know why the rules distinguish between directly and indirectly involved interests, and why the public generally exception exists.

***Realize the importance of the facts.*** Deciding whether you have a disqualifying conflict of interest depends just as much--if not more--on the facts of your particular situation as it does on "the law."

***Don't try to memorize a lot of rules.*** Once you understand the "big picture" you'll know how to look up and understand the particular rules you need to apply to any given case.

***Don't be afraid to ask for advice.*** It is available from your agency's legal counsel and from the FPPC.

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